

## United States Senate

WASHINGTON, DC 20510-4305

July 10, 2013

The Honorable Gina McCarthy  
Assistant Administrator for Air and Radiation  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

Dear Assistant Administrator McCarthy:

Thank you for recently taking the time to visit with me on issues of importance to Texas. I am glad we had the opportunity to meet and I wanted to follow up on some of the items we discussed during our meeting. As you know, my home state of Texas is working with the Environmental Protection Agency (EPA) on several important fronts. As we discussed, it is imperative that our state officials are able to have effective, substantive communication and a constructive dialogue with you and other EPA officials on regulations impacting public health.

Of particular concern are the significant EPA regulations such as the Cross State Air Pollution Rule (CSAPR) and whether the EPA can protect the due process of the states, and respect the states' role under the Clean Air Act. For example, while Texas was not included in the CSAPR when EPA first proposed it, the state was suddenly included in the final rule. The EPA mandated these reductions because the agency modeled a small contribution from Texas at one monitor 500 miles away in Madison County, Illinois – a location EPA itself has concluded is in air-quality attainment. Texas was given no opportunity to challenge this claim. Without fair notice, the EPA mandated that Texas slash its SO<sub>2</sub> (sulfur dioxide) emissions by half and greatly reduce NO<sub>x</sub> (nitrogen oxide) emissions in less than five months--an unprecedented and impossible compliance timetable.

The standard time frame for permitting, constructing and installing new emission controls is several years. Under the CSAPR, Texas was facing the closure of two power plants units, three mines, and as many as 500 employees losing their jobs due to the short timeline and requirements. Further, the grid operator, the Electricity Reliability Council of Texas (ERCOT), indicated that if the rule had been in effect in 2011, we would have experienced rolling blackouts for August. This would mean hardship for Texans, such as low-income seniors on a fixed income. The EPA corrected errors to modeling assumptions and corresponding emissions budgets for several of the states under the rule – but other mistakes remain. For example, the EPA overestimates base generation capacity for our grid by twenty thousand megawatts. This estimate includes 100 percent of Texas' installed wind generation – as though the wind power is always available. However, the ERCOT de-rates wind generation to 8.7 percent due to its unpredictability and unreliability as a generation source. The overall estimate also includes power plants that are currently retired and mothballed.

I raise this issue again because the integrity of our state's electrical grid is still at risk, as the Supreme Court recently agreed to review a lower court decision striking down the rule, and we will be into 2014 before we know how this will be resolved by the Court. We need to understand how the EPA, under your leadership, will address these prior problems with due process for Texas in the future – whatever the outcome of the litigation.

The EPA is also working to establish carbon emissions standards for both new and existing power plants where the EPA would set different overall emissions goals for each state and power companies would figure out how best to meet them through a combination of efficiency, less coal use, or renewable energy. The EPA also has to consider how best to regulate carbon dioxide from other stationary sources, including oil and gas refineries and cement kilns.


Will you offer your commitment to work with Texas – in your current capacity, or should you be confirmed as the EPA Administrator – and accept data on the state's power capacity and generation? Will you provide assurances that the EPA will work with the TCEQ to ensure that the CSAPR and any other future regulations are based on accurate and verifiable data from Texas?

Another item of importance is the Texas Flex Permits program. Texas was victorious again last August as the U.S. Court of Appeals for the Fifth Circuit rejected the EPA's disapproval of Texas' program. Numerous complex facilities, notably including refineries and chemical plants, have received flex permits from the TCEQ governing emissions from all operations at their Texas facilities, and have devised compliance strategies based upon these flex permits.

But after disapproving the program, the EPA required that these facilities undergo a permit review process to replace the invalidated flex permits with Title V operating permits that EPA deems acceptable. Now that the court has overturned EPA's disapproval, TCEQ reports that the EPA wants previous, suggested changes to the program, and they and industry are concerned about delays and uncertainty in the program. I am told that the TCEQ and the EPA Region 6 office have been working cooperatively on revisions to satisfy EPA's concerns and ensure regulatory certainty for all permit holders seeking to comply with state and federal standards. Will you support what is presently a constructive working relationship with the new Region 6 Administrator, Ron Curry, to resolve the Texas Flex Permits program approval?

Again, thank you for the opportunity to discuss these and other issues in person. I would like to have your commitments so that we can establish an effective working relationship going forward, and would appreciate a response by July 15, 2013. Thank you for your consideration.

Sincerely,



JOHN CORNYN  
United State Senator